



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE



IN REPLY REFER TO:  
FWS-2019-00424

1 Wildlife Drive  
Sanibel, Florida 33957

June 26, 2019

Jimmy Tobias  
Muck-Rock News  
411A Highland Ave  
Somerville, Massachusetts 02144-2516

Dear Mr. Tobias:

This serves as our second partial response to your Freedom of Information Act (FOIA), 5 U.S.C. § 552, request, dated February 7, 2019. In your request, you asked for:

- *Any written or electronic communications, including email attachments, text messages, and instant messages, between Robert Tawes, the chief of the division of environmental review, and any representative, employee, agent, or owner of one or more of the following entities:*
  - *Alico Land Development, Inc*
  - *Barron Collier Investment, Ltd*
  - *Collier Enterprises Management, Inc*
  - *Consolidated Citrus Limited Partnership*
  - *English Brothers Partnership*
  - *Half Circle L Ranch LLP*
  - *Heller Bros. Packing Corp*
  - *JP Ranch I, LLC*
  - *Owl Hammock Immokalee, LLC*
  - *Pacific Land, Ltd*
  - *Sunniland Family Limited Partnership*
- *This request seeks records produced between January 1, 2017 and the date this request is processed.*

### Response

We provided a response to you on June 13, 2019. The Southeast Region Ecological Services Program has searched its records and has located two (2) documents that are responsive to your request. After consulting with the Office of the Regional Solicitor, it has been determined that one (1) of the documents you are seeking is partially exempt from disclosure pursuant to Exemption 5, 5 U.S.C § 552(5), of the FOIA. A submitter's notice will be sent to the applicant for review of the remaining record prior to a final decision. You will receive a copy of the letter upon signature of the submitter's notice to the applicant.

### Exemption 5

Exemption 5 of the FOIA allows an agency to withhold “inter-agency and intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Agency.” 5 U.S.C. § 552(b)(5). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges.

#### *Commercial Information Privilege*

When the government enters the marketplace as an ordinary commercial buyer or seller, the government’s information is protected under the commercial information privilege if it is sensitive information not otherwise available, and disclosure would significantly harm the government’s monetary functions or commercial interests. The theory behind the privilege is that the government may be placed at a competitive disadvantage or lose the benefit of its bargain if such information were disclosed to the public.

The conference telephone number and passcode in this case pertains to the Service’s ongoing operations in the area that is the subject of your request. The information withheld under this privilege reflects information concerning the operations of the government which could be harmed if disclosed. Therefore, we conclude that disclosure of conference telephone number and passcode could place the government at a competitive disadvantage. We are releasing the factual information in the responsive document that would not harm the Service’s commercial interests.

We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA’s general rule of disclosure.

In addition to me, the official responsible for this denial is:

Brigette J. Beaton, Attorney-Advisor  
Office of the Regional Solicitor  
U.S. Department of the Interior  
75 Ted Turner Drive, S.W., Suite 304  
Atlanta, Georgia 30303

### **Appeal Rights**

You may appeal this partial denial under 43 C.F.R. § 2.57 by writing to:

Freedom of Information Act Appeals Officer  
U.S. Department of the Interior  
Office of the Solicitor  
1849 C Street, NW, Mail Stop 6556  
Washington, D.C. 20240  
Email: FOIA.Appeals@sol.doi.gov

Your appeal must be received no later than 90 workdays after the date of this letter. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend “FREEDOM OF INFORMATION APPEAL.” Your appeal should be accompanied by a copy of your original request and this letter, along with any information you have which leads you to believe the records should be made available. Failure to include with your appeal all correspondence between you and the Service will result in the Department’s rejection of your appeal, unless the FOIA Appeals Officer determines (in the FOIA Appeals Officer’s sole discretion) that good cause exists to accept the defective appeal. Please include your name and daytime telephone number (or the name

and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA Appeals Officer needs additional information or clarification of your appeal.

### **Mediation Services**

Also, as part of the 2007 OPEN Government Act FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation.

You may contact OGIS via regular mail at:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road - OGIS  
College Park, MD 20740-6001

You may also contact OGIS in the following ways:

E-mail:	<a href="mailto:ogis@nara.gov">ogis@nara.gov</a>
Web:	<a href="https://ogis.archives.gov">https://ogis.archives.gov</a>
Phone:	(202) 741-5770
Fax:	(202) 741-5769
Toll-free:	1-877-684-6448

You also may seek dispute resolution services from our FOIA Public Liaison, Cathy Willis, Chief Branch of FOIA, Records, and Privacy, at (720) 425-5173.

### **Conclusion**

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions, please contact Robert Tawes, Chief, Division of Environmental Review, at (404) 679-7142 or [robert\\_tawes@fws.gov](mailto:robert_tawes@fws.gov). Thank you for contacting the U.S. Fish and Wildlife Service.

Sincerely,

6/26/2019

**X** Tiffany McClurkin

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Tiffany McClurkin  
Region 4 FOIA Coordinator  
Signed by: TIFFANY MCCLURKIN